A

KBH MARINE INDUSTRY SDN BHD & ANOR v. ACE CREDIT (M) SDN BHD & OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
CHE MOHD RUZIMA GHAZALI JCA
LIM CHONG FONG JCA
B ALWI ABDUL WAHAB JCA
[CIVIL APPEALS NOS: P-02(IM)(NCvC)-335-03-2023, P-02(IM)(NCvC)-336-03-2023, P-02(IM)(NCvC)-337-03-2023 & P-02(IM)(NCvC)-384-03-2023]
13 OCTOBER 2025

C

Abstract – *A loan agreement that has been varied, altered or modified without the prior consent of the registrar of moneylenders appointed pursuant to the Moneylenders Act 1951 is null, void and unenforceable. Consequently, where the agreement is void, the other loan agreements in*
D *the same transaction must be avoided too. However, such contravention does not tantamount to illegality in the s. 24 of the Contracts Act 1950 ('CA') sense. Since the contract is found void, the restitutionary remedy pursuant to s. 66 of the CA is correct and appropriate.*

E ***MONEYLENDERS:*** *Moneylending transaction – Loan – Borrower and moneylender entered into moneylending agreement – Loan agreement failed to comply with provisions and prescribed forms – Whether valid – Whether all related documents void – Whether nature of contravention serious – Whether contravention of statute tantamount to illegality – Restitutionary remedy – Whether s. 66 of*
F *Contracts Act 1950 applicable*

CONTRACT: *Remedies – Restitution – Borrower and moneylender entered into moneylending agreement – Loan agreement failed to comply with provisions and prescribed forms – Whether loan agreement and all related documents void –*
G *Whether contravention tantamount to illegality under s. 24 of Contracts Act 1950 – Whether loan agreement wholly performed – Restitutionary remedy – Whether s. 66 of Contracts Act 1950 applicable*

These were four related appeals that arose from three High Court suits pertaining to a money lending transaction. Ace Credit was a licensed money
H lending company under the Moneylenders Act 1951 ('Act'). A loan agreement dated 20 October 2017 ('agreement') was made between Ace Credit and Pioneer Conglomerate which was repayable in six months. Besides the agreement, there were also several other documents executed including letter of offer, memorandum of deposit and charge annexure ('other
I loan documents'). Pursuant to the agreement, Ace Credit disbursed sums of money to Pioneer Conglomerate, KHB Marine and to Malayan Banking Berhad to allow KBH Marine to redeem some charged landed properties. Upon disbursement of the aforesaid loan money, Ace Credit entered a private

caveat on the properties pursuant to the charge annexure entered between Ace Credit and KBH Marine as security for the loan. Pursuant to the agreement, KBH Marine serviced the loan by only paying the sum of RM528,300 but thereafter defaulted in the repayment of the loan as per the agreement. Subsequently, KBH Marine initiated Suit 74 against eight defendants which included Pioneer Conglomerate and Ace Credit. Subsequently, Ace Credit initiated a suit against Pioneer Conglomerate and CSC. In retaliation, Pioneer Conglomerate initiated a suit against Ace Credit. Both these suits were eventually renamed as Suit 123 and Suit 11 respectively. Suit 74 was heard together with Suit 123 and Suit 11. Subsequently, Pioneer Conglomerate and CSC as well as KBH Marine and SSH lodged their respective applications against Ace Credit in Suit 74 to have several questions of law determined pursuant to O. 14A and O. 33 rr. 2 and 5 of the Rules of Court 2012 ('applications'). The questions of law were (i) whether the loan agreement was invalid because it was contrary to the Act due to the failure of complying with the provisions and also the prescribed form ('Question 1'); (ii) whether if the loan agreement was invalid, then all related documents were also invalid ('Question 2'); and (iii) whether s. 66 of the Contracts Act 1950 ('CA') was applicable ('Question 3'). The High Court held that (i) the loan agreement was contrary to the Act, thus it was invalid and could not be enforced. Question 1 was answered affirmatively; (ii) when the loan agreement was invalid, then any documents completed based on the agreement were also invalid. Question 2 was answered affirmatively; and (iii) s. 66 of the CA was applicable based on the facts of this case where the contract entered into was a void contract and the parties shall be restored back to their original position before the contract was entered into. KBH Marine and SSH as well as Pioneer Conglomerate and CSC were dissatisfied with part of the High Court's judgment and respectively lodged Appeal 335 and Appeal 384 to the Court of Appeal. Ace Credit, dissatisfied with part of the judgment, lodged Appeal 336 and Appeal 337 to the Court of Appeal.

Held (dismissing appeals)
Per Lim Chong Fong JCA delivering the judgment of the court:

(1) There was no dispute that there had been a contravention of the Act as so asserted by Pioneer Conglomerate and CSC as well as KHB Marine and SSH, in that, both the form of loan agreement used and interest charged were not in accordance with the provisions in the Act. In the premises, the agreement was contrary to the Act. Although this court was empowered to cure the problem of excessive interest charged by Ace Credit pursuant to s. 21(2) of the Act, it was pointless to do so as there was a contravention of s. 10P of the Act in respect of the form of loan agreement used which could not be saved. (paras 35 & 38)

(2) In consequence of the contravention of the Act, the agreement was void but not *ab initio*. As a result, the other loan documents were invalid because they were related and stated in the agreement and must thus be deemed as one whole document in the same transaction. Hence, when the agreement was void, the other loan documents must be avoided too. It followed that the private caveat lodged by Ace Credit must likewise be invalid. *Albeit* the charge annexure and the private caveat on the properties created separate security rights accorded to Ace Credit, they were inextricably connected to the agreement. It followed that the invalidation of the agreement necessarily invalidated the other loan documents and the private caveat lodged on the properties as well. This was simply because the substratum of the security for the loan was lost when the loan agreement was avoided. This security could not thereafter stand in isolation. (paras 49-41)

(3) There was no doubt that there was a contravention of statute by reason of the wrong form used as well as interest rate charged but these did not tantamount to illegality in the s. 24 of the CA sense involving the contractual consideration. The nature of the contravention of the Act here was not serious. There was no attempt to conceal the object of the making of the agreement. Accordingly, there was no substantive illegality. Moreover, the agreement had been wholly performed by Ace Credit but Pioneer Conglomerate had defaulted in repaying the loan particularly the principal sum. Since the contract was found void, the restitutionary remedy as ordered pursuant to s. 66 of the CA was correct and appropriate. (paras 46-49)

Case(s) referred to:

Amwang Credit Sdn Bhd v. Goh Che Chern [2014] CLJU 331; [2014] 1 LNS 331 CA ***(refd)***

Concrete Parade Sdn Bhd v. Apex Equity Holdings Bhd & Ors [2021] 9 CLJ 849 CA ***(refd)***

Golden Wheel Credit Sdn Bhd v. Dato' Seah Tiong Din (No 2) [2023] 6 CLJ 438 HC ***(refd)***

Golden Wheel Credit Sdn Bhd v. Dato' Seah Tiong Din [2025] 10 CLJ 742 CA ***(refd)***

Joan Fung v. Allianz General Insurance Company (Malaysia) Bhd [2012] 6 CLJ 879 HC ***(refd)***

KBH MArine Industry Sdn Bhd & Anor v. Pioneer Conglomerate Sdn Bhd & Ors [2023] CLJU 561; [2023] 1 LNS 561 HC ***(refd)***

Malayan Banking Bhd v. Neway Development Sdn Bhd & Ors [2012] 9 CLJ 1014 CA ***(refd)***

MFS Sdn Bhd v. P Vivekananda Paniarasalam [2025] 2 CLJ 602 HC ***(refd)***

Muhibbah Teguh Sdn Bhd v. Yaacob Mat Yim [2005] 4 CLJ 853 HC ***(refd)***

Powernet Industries Sdn Bhd v. Golden Wheel Credit Sdn Bhd [2020] 10 CLJ 374 CA ***(refd)***

Triple Zest Trading & Supplies & Ors v. Applied Business Technologies Sdn Bhd [2023] 10 CLJ 187 FC ***(refd)***

Yap Lan & Ors v. Kong See Kuan [2018] CLJU 819; [2018] 1 LNS 819 HC ***(refd)***
Yee Hock Lai & Anor v. Unity Performance Sdn Bhd & Anor [2013] CLJU 486; [2013] 1 LNS 486 CA ***(refd)***

Legislation referred to:
Contracts Act 1950, ss. 24, 66
Moneylenders (Control and Licensing) Regulations 2003, Schedule K
Moneylenders Act 1951, ss. 9A, 10P(1), (3), 15(4), 17A(3), 19, 21(2), 22
Rules of Court 2012, O. 14A, O. 33 rr. 2, 5

(Civil Appeal No: P-02(IM)(NCvC)-335-03-2023)
For the 1st & 2nd appellants - Tan Swee Cheng & Daphne Choy Gaik Choo; M/s SC Tan
For the respondent - Dinesh Nandrajog, Loo Man Keith & Lim Chun Yen; M/s Peter Ling & Van Geyzel

(Civil Appeal No: P-02(IM (NCvC)-336-03-2023)
For the appellant - Dinesh Nandrajog, Loo Man Keith & Lim Chun Yen; M/s Peter Ling & Van Geyzel
For the 1st & 2nd respondents - Tan Swee Cheng & Daphne Choy Gaik Choo; M/s SC Tan
For the 3rd & 4th respondents - Rajakumaran Muthusamy; M/s Ram Yogan Sivam
For the 5th, 6th & 7th respondents - M/s Yeoh Shim Siow & Lay Kuan
For the 8th & 9th respondents - David Tan Hong Kai; M/s Presgrave & Matthews

(Civil Appeal No: P-02(IM)(NCvC)-337-03-2023)
For the appellant - Dinesh Nandrajog, Loo Man Keith & Lim Chun Yen; M/s Peter Ling & Van Geyzel
For the 1st & 4th respondents - Rajakumaran Muthusamy; M/s Ram Yogan Sivam
For the 2nd & 3rd respondents - Tan Swee Cheng & Daphne Choy Gaik Choo; M/s SC Tan
For the 5th, 6th & 7th respondents - M/s Yeoh Shim Siow & Lay Kuan
For the 8th & 9th respondents - David Tan Hong Kai; M/s Presgrave & Matthews

(Civil Appeal No: P-02(IM)(NCvC)-384-03-2023)
For the 1st & 2nd appellants - Rajakumaran Muthusamy; M/s Ram Yogan Sivam
For the respondent - Dinesh Nandrajog, Loo Man Keith & Lim Chun Yen; M/s Peter Ling & Van Geyzel

[Editor's note: For the High Court judgment, please see KBH Marine Industry Sdn Bhd & Anor v. Pioneer Conglomerate Sdn Bhd & Ors And Other Cases [2020] CLJU 1814; [2020] 1 LNS 1814 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Lim Chong Fong JCA:

Introduction

[1] These are four related appeals that arose from three High Court suits pertaining to a money lending transaction.

[2] For clarity and convenience, the parties will be addressed below by their names abbreviated as follows:

Civil Suit No.: PA-22NCVC-74-05-2018 ("Suit 74")	
First plaintiff	KBH Marine;
Second plaintiff	SSH;
First defendant	Pioneer Conglomerate;
Second defendant	CSC;
Third defendant	TPC;
Fourth defendant	YBL;
Fifth defendant	TSG;
Sixth defendant	LSA;
Seventh defendant	KYY; and
Eighth defendant	Ace Credit
Civil Suit No.: PA-22NCVC-123-05-2019 ("Suit 123") (transferred from High Court of Kuala Lumpur Civil Suit No.: WA-22NCVC-394-06-2018)	
Plaintiff	Ace Credit;
First defendant	Pioneer Conglomerate;
Second defendant	CSC;
First third party	KBH Marine;
Second third party	SSH;
Third third party	KES;
Fourth third party	KET;
Civil Suit No.: PA-22NCVC-11-04-2019 ("Suit 11") (transferred from High Court of Kuala Lumpur Civil Suit No.: WA-22NCC-290-07-2018)	
Plaintiff	Pioneer Conglomerate; and
Defendant	Ace Credit.

[3] We heard the appeals on 16 July 2025 and thereafter adjourned our decision to deliberate particularly on the difficult issues of law that have arisen.

[4] Having done so, we give our decisions below and the supporting grounds thereto.

Background

[5] Ace Credit is a licensed money lending company under the Moneylenders Act 1951 ("Act").

[6] By a loan agreement dated 20 October 2017 ("agreement") made between Ace Credit and Pioneer Conglomerate repayable in six months. Besides the agreement, there were also several other documents executed including letter of offer, memorandum of deposit and charge annexure ("other loan documents").

[7] Pursuant to the agreement, Ace Credit disbursed:

(i) the sum of RM35,000,000 in three instalments to Pioneer Conglomerate of RM10,000,000 on 19 October 2017, RM6,275,000 on 23 October 2017 and RM18,725,000 on 24 October 2017;

(ii) the sum of RM4,517,823.84 to KBH Marine; and

(iii) the sum of RM10,482,176.16 to Malayan Banking Bhd to allow KBH Marine to redeem the following charged landed properties:

(a) hakmilik HSD 17487, No Lot PT325 Seksyen 11E, Bandar Georgetown, Daerah Timur Laut, Negeri Pulau Pinang;

(b) hakmilik PN 7065, No Lot 364 Seksyen 11E, Bandar Georgetown, Daerah Timur Laut, Negeri Pulau Pinang; and

(c) hakmilik PN 6971, No Lot 363 Seksyen 11E, Bandar Georgetown, Daerah Timur Laut, Negeri Pulau Pinang (collectively "properties").

[8] Upon disbursement of the aforesaid loan money, Ace Credit entered private caveat on the properties pursuant to the charge annexure entered between Ace Credit and KBH Marine as security for the loan.

[9] Pursuant to the agreement, KBH Marine serviced the loan by only paying the sum of RM528,300, but thereafter defaulted in the repayment of the loan as per the agreement.

[10] On 7 May 2018, KBH Marine initiated Suit 74 in the Penang High Court against eight defendants which included Pioneer Conglomerate and Ace Credit.

[11] Subsequently, Ace Credit on 27 June 2018 initiated Kuala Lumpur High Court Suit No. WA-22NCVC-394-06-2018 against Pioneer Conglomerate and CSC. In retaliation, Pioneer Conglomerate on 13 July 2018 initiated Kuala Lumpur High Court Suit No. WA-22NCC-290-07-2018 against Ace Credit. Both these suits were eventually transferred to the Penang High Court and renamed as Suit 123 and Suit 11 respectively.

In The High Court

[12] Suit 74 was heard together with Suit 123 and Suit 11.

[13] In Suit 74, KBH Marine and SSH claimed for the following:

59. Wherefore, the 1st and 2nd Plaintiffs jointly and severally claim and pray for judgments be entered against the Defendants jointly and severally as follows:

i) that the 1st-7th Defendants do jointly and severally repay a sum of RM62,500.00 to the 1st Plaintiff and RM 3,000,000.00 to the 2nd Plaintiff;

ii) that the 2nd and 7th Defendants do jointly and severally repay the sum of RM 7,550,000.00 to the 2nd Plaintiff;

iii) that the 2nd Defendant do repay a sum of RM67,881.94 to the 1st Plaintiff being the expenses charged to Koay Eng Seng's credit card;

iv) that the 2nd Defendant do repay a sum of RM 2,400.00 to the 1st Plaintiff being the sum advanced to the 2nd Defendant by the 1st Plaintiff;

v) that the 6th Defendant do repay the 2nd Plaintiff the total sum of monies and benefits received by him as an employee since 1 November 2017;

vi) that the 2nd Defendant do repay the 2nd Plaintiff the total sum of monies and benefits paid to Teng Seng Hoe as an employee from 13 April 2017 to his resignation on 27 March 2018;

vii) a declaration that the Loan Agreement dated 20 October 2017 entered into between the 1st Defendant and the 8 Defendant is null and void pursuant Moneylenders Act 1951;

viii) a declaration that the 1st Plaintiff is not liable to the 8th Defendant for any loan grated to the 1st Defendant;

ix) further and in the alternative, the 1st-7th Defendants do repay the loan to the 8th Defendant the subject loan pursuant to the Loan Agreement of 20 October 2017 and caused the private caveats lodged on the said Properties by the 8th Defendant to the withdrawn and returned or cause to be returned the issue documents or title of the 2 properties known as No. Hakmilik HSD 17487, No. Lot PT 325 Seksyen 11E, Bandar George Town, Daerah Timor Laut, Negeri Pulau Pinang and No Hakmilik PN 7065, NO. Lot 364 Seksyen 11E, Bandar George Town, Daerah Timor Laut, Negeri Pulau Pinang, to the 1st Plaintiff.

x) further and in the alternative, the 1st-7th Defendants jointly and severally especially the 1st Defendant do indemnify the 1st Plaintiff and/or repay or cause to be repaid the aforesaid RM 38,442,820.55 to the 8th Defendant and any interest incurred thereon within the stipulated time to be fixed by this Honourable Court;

xi) the caveats lodged by the 8th Defendant on the following properties are hereby ordered to be removed and/or struck out forthwith and the Registrar of the Penang Land Registry and/or the relevant authorities do give full effect to this order:

a) No. Hakmilik HSD 17487, No. Lot PT 325 Seksyen 11E, Bandar George Town, Daerah Timor Laut, Negeri Pulau Pinang;

b) No. Hakmilik PN 7065, No. Lot 364 Seksyen 11E, Bandar George Town, Daerah Timor Laut, Negeri Pulau Pinang; and

c) No. Hakmilik PN 6971, No. Lot 363 Seksyen 11E, Bandar George Town, Daerah Timor Laut, Negeri Pulau Pinang ("the said Properties");

xii) the 8th Defendant is ordered within 7 days from the date of this order to return to the 1st Plaintiff the original issue documents of title for the properties known as:

a) No. Hakmilik HSD 17487, No. Lot PT 325 Seksyen 11E, Bandar George Town, Daerah Timor Laut, Negeri Pulau Pinang; and

b) No. Hakmilik PN 7065, No. Lot 364 Seksyen 11E, Bandar Goerge Town, Daerah Timor Laut, Negeri Pulau Pinang.

xiii) general damages including aggravated and exemplary damages to be assessed by this Honourable Court and/or the Senior Assistant Registrar;

xiv) interest at 5% per annum from 18 March 2018 until full and final settlement;

xv) any other reliefs which this Honourable Court deems fit and proper.

[14] In Suit 123, Ace Credit claimed for the following (in Bahasa Melayu):

15. JUSTERU ITU, P kini menuntut terhadap Defendan-Defendan seperti berikut –

(a) Jumlah wang sebanyak RM51,515,418-28 sebagai suatu pinjaman di bawah Perjanjian bertarikh 20.10.2017;

(b) Ganti rugi am yang akan ditaksirkan oleh Mahkamah yang Mulia ini;

(c) Faedah pada kadar 1.5% sebulan ke atas jumlah penghakiman dari tarikh writ saman ini sehingga penyelesaian penuh;

(d) Kos tindakan ini; dan

(e) Apa-apa relif selanjutnya dan lain sebagaimana difikir suaimanfaat oleh Mahkamah yang Mulia ini.

[15] In Suit 11, Pioneer Conglomerate claimed for the following:

47. Hence, the plaintiff prays for judgement against the Defendant for:-

a) A declaration that the 15,430,000 shares in Ta Win Holdings Berhad are not pledged to the Defendant as security for the Term Loan of RM50,000,000.00;

b) A declaration that 15,430,000 shares in Ta Win Holdings Berhad belong to the Plaintiff and the Plaintiff is fee to deal with the 15,430,000 shares;

c) A declaration that the Memorandum of Deposit dated 19.10.2017 alleged to have been executed by the Plaintiff is void and unenforceable;

d) An order for injunction that the Defendant whether by itself or through its employees or agents or otherwise howsoever is prohibited from acting upon the said Memorandum of Deposit dated 19.10.2017 by any means whether to sell or dispose or otherwise deal with the 15,430,000 shares in Ta Win Holdings Berhad owned by the Plaintiff;

e) General damages;

f) Costs; and

g) Other reliefs deemed fit and appropriate by this Honourable Court.

[16] Subsequently Pioneer Conglomerate and CSC as well as KBH Marine and SSH lodged their respective applications against Ace Credit in Suit 74 to have several questions of law determined pursuant to O. 14A and O. 33 rr. 2 and 5 of the Rules of Court 2012 ("applications").

[17] The questions of law posed (in Bahasa Melayu) by KBH Marine and SSH are as follows:

Soalan 1

Sama ada Perjanjian bertarikh 20.10.2017 yang dimasuki antara Defendan Pertama dan Defendan Kelapan adalah tidak sah dan batal kerana melanggar salah satu atau lebih perkara-perkara berikut:

(a) Seksyen 10P Akta Pemberipinjam Wang 1951 dan Peraturan 10 Peraturan-Peraturan Pemberipinjam Wang (Kawalan dan Perlesenan) 2003;

(b) Seksyen 17A Akta Pemberipinjam Wang 1951; dan/atau

(c) Seksyen 17 Akta Pemberipinjam Wang 1951.

Soalan 2

Sekiranya Soalan di atas dijawab dalam afirmatif, sama ada sebagai akibatnya kesemua instrument yang berkenaan dan/atau instrument yang dilaksanakan menurut Perjanjian Pinjaman bertarikh 20.20 2017 tersebut, termasuk gadaian dan kaveat adalah salah di sisi undang-undang, tidak sah, tidak berkenaan dan tidak boleh di kuatkuasakan.

Soalan 3

Sekiranya jawapan kepada Soalan 2 di atas adalah dalam afirmatif, sama ada Defendan Kelapan berhak untuk apa-apa remedy dalam restitusi di bawah seksyen 66 Akta Kontrak 1950, wang dipegang dan diterima, pengkayaan yang tidakpatut dan/atau apa-apa remedi lain.

[18] Meanwhile, the questions of law posed (in Bahasa Melayu) by Pioneer Conglomerate are as follows:

Sama ada Perjanjian bertarikh 20.10.2017 yang dimasuki antara Defendan Pertama dan Defendan Kelapan adalah tidak sah dan batal kerana melanggar salah satu atau lebih perkara-perkara berikut:

(a) Seksyen 10P Akta Pemberipinjam Wang 1951 dan Peraturan 10 Peraturan-Peraturan Pemberipinjam Wang (Kawalan & Perlesenan) 2003;

(b) Seksyen 9A Akta Pemberipinjam Wang 1951;

(c) Seksyen 17A Akta Pemberipinjam Wang 1951;

(d) Seksyen 18 Akta Pemberipinjam Wang 1951;

(e) Seksyen 21 Akta Pemberipinjam Wang 1951.

(f) Perjanjian Pinjaman bercanggah dengan klausa 1 Jadual K, Kaedah-Kaedah Pemberipinjam Wang (Kawalan & Perlesenan) 2003.

[19] The learned High Court Judicial Commissioner on 9 February 2023, after hearing submissions of the parties made the following judgment ("judgment") in Bahasa Melayu based on the applications:

... Soalan 1, Soalan 2 dan Soalan 3 kesemuanya dijawab dalam afirmatif dan telah diperintahkan bahawa penghakiman sebagaimana yang diperuntukkan kemudian daripada ini dicatatkan. Adalah dihakimkan bahawa:

1. Perjanjian pinjaman bertarikh 20.10.2017 yang dimasuki antara Defendan Pertama dan Defendan Kelapan adalah tidak sah dan batal kerana melanggar Akta Pemberipinjam Wang 1951;

2. Kaveat-kaveat yang dimasukkan oleh Defendan Ke-8 ke atas hartanah-hartanah berikut adalah dengan ini diperintahkan supaya dikeluarkan dan/atau dibatalkan dengan serta-merta dan Pendaftar Pejabat Pendaftaran Tanah Pulau Pinang dan/atau pihak-pihak berkuasa yang berkenaan hendaklah memberi kesan penuh kepada perintah ini:

   a) No. Hakmilik HSD 17487, No. Lot PT325 Seksyen 11E, Bandar George Town, Daerah Timor Laut, Negeri Pulau Pinang melalui No. Perserahan 0799B2017010164;

   b) No. Hakmilik PN 7065, No. Lot 364 Seksyen 11E, Bandar George Town, Daerah Timor Laut, Negeri Pulau Pinang melalui No. Perserahan 0799B2017010164; dan

A

c) No. Hakmilik PN 6971, No. Lot 363 Seksyen 11E, Bandar George Town, Daerah Timor Laut, Negeri Pulau Pinang melalui No. Perserahan 0799B2017010164.

3. Defendan Ke-8 diperintahkan dalam tempoh 14 hari dari tarikh perintah ini untuk memulangkan kepada Plaintif Pertama isu dokumen hak milik asal untuk hartanah-hartanah yang dikenali sebagai:

B

a) No. Hakmilik HSD 17487, No. LotPT 325 Seksyen 11E, Bandar George Town, Daerah Timor Laut, Negeri Pulau Pinang; dan

b) No. Hakmilik PN 7065, No. Lot 364 Seksyen 11E, Bandar George Town, Daerah Timor Laut, Negeri Pulau Pinang;

C

4. Plaintif Pertama diperintahkan dalam tempoh 30 hari dari tarikh perintah ini untuk membayar kepada Defendan Ke-8 wang yang diterima daripada Defendan Ke-8 iaitu baki amaun bayaran untuk ditolak (sekiranya ada) daripada RM15,000,000.00 yang merupakan amaun pinjaman yang diterima oleh Defendan Pertama; dan

D

5. Tiada perintah mengenai kos.

[20] The pertinent extract of the grounds of judgment of the learned High Court Judicial Commissioner which has been reported in *KBH Marine Industry Sdn Bhd & Anor v. Pioneer Conglomerate Sdn Bhd & Ors* [2023] CLJU 561; [2023] 1 LNS 561; [2023] MLRHU 1410 read as follows:

E

[66] After refining and examining the arguments and facts of the case, this court now states how the decisions are based.

First (1st) Question

F

Reasons for The First Question

[67] The Plaintiffs in arguing for this question briefly states that the loan is invalid because it is contrary to the Moneylenders Act 1951 due to failure to comply with the provisions and also the prescribed form. This causes the agreement to be invalid and void. A facility of this nature is not a term loan but is an overdraft facility for a period of 6 months.

G

[68] The Plaintiffs argue that the nature of loans covered by the Moneylenders Act 1951 is term loan only and not an overdraft or any other form of loan facility like in our case. This argument is further strengthened by the fact that the interest charged as much as 18% per annum is contrary to the allocation of money only allowing as much as 12% per annum.

H

[69] D8 argued that this should not be an issue now because it was never disputed by the Plaintiffs before. This is an afterthought. D8 simply said that the provision had been complied with and that the Form's error (which was denied) did not affect the agreement because the form was not part of the agreement. D8 argued that the mistake did not affect the agreement because the Form used was not part of the agreement.

I

[70] As for the interest issue, it can also be amended because it is within the jurisdiction of the Court. D8 argued that it should be amended by this Court to be in line with the Act. The agreement is still enforceable. This issue has also never been raised before when the money has been obtained and used by the Plaintiffs.

[71] The Court has referred to the relevant provisions and found that this Agreement is contrary to the said Act and it cannot be enforced. This is because the form and provisions are mandatory to be followed by D8. Failure to do so will cause the agreement to be invalid. P1 submits that the intention of Parliament in enacting the Moneylenders Act was to protect the borrower. It is the duty of the Court to interpret the provisions based on the intention of the maker and not to interpret otherwise.

[72] The Court referred to the relevant provision which is s. 10P of Moneylenders Act 1951. The s. 10P is reproduced as follows:

> Any moneylending agreement which does not comply with the prescribed form shall be void and have no effect and shall not be enforceable.

[73] In *Merong Mahawangsa Sdn Bhd & Anor v. Dato Shazryl Eskay Bin Abdullah* [2015] 5 MLRA 377; [2015] 5 MLJ 619; [2015] 8 CLJ 212, the court held that:

> (19) *It is perfectly settled, that where the contract which the plaintiff seeks to enforce, be it express or implied, is expressly or by implication forbidden by the common law or statute, no court will lend its assistance to give effect* (*Cope v. Rowlands* [1836] 2 M&W 149, at p 157 per Parke B, which was quoted with approval in *Tan Chee Hoe & Sdn Bhd v. Code Focus Sdn Bhd* [2014] 4 MLRA 11; [2014] 3 MLJ 301; [2014] 3 CLJ 141 per Ramly Ali FCJ, delivering the judgment of the court). 'Under s. 2(g) of the Contracts Act 1950, an unlawful agreement is not enforceable' (*Lori (M) Bhd (Interim Receiver) v. Arab-Malaysian Finance Bhd* [1999] 1 MLRA 274; [1999] 3 MLJ 81; [1999] 2 CLJ 997; [1999] 3 AMR 3161 per Edgar Joseph Jr FCJ, delivering the judgment of the court).

[74] In *Ng Mui Khin v. Gillespie Bros* [1979] 1 MLRA 313; [1980] 2 MLJ 9, the Federal Court held:

> At the outset we wish to observe that the Moneylenders Ordinance 1951 does not apply to moneylending but only to moneylenders. It does not make every moneylending transaction illegal and unenforceable. It is a moneylending transaction of a moneylender which is the subject matter of the Ordinance and must comply with its provisions on pain of being declared illegal and unenforceable by the court.

[75] Based on the above reasons, this Court decided that the First Question is answered affirmatively and decided that the Agreement was void.

Second (2nd) Question

[76] P1 argued that if the Agreement is invalid then all related documents are also invalid. This is because it is the core of PTs argument that all documents related to the Agreement should be considered as "one document" and not separate. P1 argued that the Charge Annexure (the Charge was not at any time registered) is part and parcel of the whole illegal transaction especially when the Loan Agreement and Charge annexure were signed on the same day as part of one transaction. D8 ought not to be allowed to sever the Charge annexure from the Loan Agreement when they were undertaken as a whole transaction.

[77] Whereas, D8 submitted that the Charge is not a loan. The purpose of a charge is to provide the lender with some security for a loan. The agreement for Charge is between the charge (the moneylender/D8) and the Chargor (P1). Therefore, it make sense to read rights under the Charge document as being quite separate from its rights under the Loan Agreement.

[78] After looking at the facts, the Court is of the view that whatever documents are related and stated as part of the agreement should be considered as one document in the same transaction. In this case also, based on the facts, the caveat entered by D8 is also on the grounds that the Loan Agreement and the 3 pieces of land are a guarantee for the loan. On this issue, the Court agreed that if the Agreement is invalid, then any documents completed based on the Agreement are also invalid. Based on the above reasons, this Court decided that the Second Question was answered affirmatively and decided that the Agreement was void.

The Third (3rd) Question

[79] Plaintiffs argued that since D8 had not complied with the provisions of the Moneylenders Act 1951, and if the Court ruled that it was invalid, then D8 could not claim the loan based on an invalid agreement from the beginning. D8 is not entitled to recover any money under the illegal Loan Agreement. Plaintiffs argued that D8, even if it came to Court based on the principle of equity, it should come with clean hands. Plaintiffs further argued and concluded that in this case equity does not apply.

[80] The question posed by D8 to the Court is, "it fair for the Plaintiffs to get a loan and after getting the benefit then come to Court to find a way to not pay all the loans?." But D8 argues that P1 and D1 had also been unjustly enriched by the monies received from the D8, which conferred a substantial benefit. P1 and D1 enjoyed and/or continues to retain the benefits of the aforesaid bargain and also the monies received.

D8 argued in this case that s. 66 of the Contracts Act 1950 applies as follows:

Section 66

Obligation of person who has received advantage under void agreement, or contract that becomes void

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

[81] In this case based on the facts, it cannot be denied that the agreement is under the Moneylenders Act as provided under s. 100A MLA 1951, reads as follows:

Where in any proceedings against any person, it is alleged that such person is a moneylender, the proof of a single loan at interest made by such person shall raise a presumption that such person is carrying on the business of moneylending, until the contrary is proved.

[82] In *Global Globe Property v. Jangka Prestasi* [2020] 5 MLRA 140; [2020] 6 CLJ 1, the court held

... even though the plaintiff makes a single loan transaction with interest charged, it triggered the presumption in s. 100A of the Moneylenders Act 1951 that it is a moneylending transaction.

[83] Considering these facts, it is clear that there has been a money lending transaction that has violated the Moneylenders Act 1951 because it has violated that provision. D8 argued that even if there was a conflict that had been discussed before, D8 should be repaid all debts or loans that had been given and used by P1 and D1 and in this situation s. 66 of the Contracts Act 1950 is applicable as stated in *Yeep Mooi v. Chu Chin Chua & Ors* [1960] 1 MLRA 439; [1981] 1 MLJ 14 held:

In our view, this case fits in squarely with the words of s. 66 as an agreement which is – discovered to be void'. An agreement – discovered to be void' does not mean that the contract is void on discovery or void because of discovery of illegality. It means what it says, in what the contract was void *ab initio* without the parties at the time being aware of the true legal position. *It is only later that the contract is found to be void and so they became aware of its voidness. We are of the view therefore that s. 66 of the contracts Act applies to this and the appellant is entitled to the restitution of her money by the pawnshop which received an advantage from its use.* (*Menaka v. Lum Kum Chum*).

[84] In *Ahmad bin Udoh & Anor v. Ng Aik Chong* [1969] 1 MLRA 373; [1969] 2 MLJ 116, the Federal Court held:

... There may be cases where parties enter into an agreement honestly thinking that it is a perfectly legal agreement and where one of them sues the other or wants the other to act on it, it is then that he may discover it to be void.

> I find the reasoning of the court in the above judgment which respect, sound. In the circumstances I would therefore express agreement with the view that since the facts and circumstances of the case as found by the learned trial judge proved that the parties were ignorant that they were executing an illegal agreement, s 66 of the Contracts (Malay States) Ordinance would apply and that therefore the plaintiff was entitled to the return of his advance, I would therefore dismiss the appeal with costs.
>
> ...

[88] In this case after the court has decided that the loan agreement is void, not void *ab initio* then s. 66, the guidance in the case of *Muhibbah Teguh Sdn Bhd v. Yaacob Mat Yim* [2005] 1 MLRH 793; [2005] 7 MLJ 270; [2005] 4 CLJ 853; [2005] 5 AMR 332 can be referred to and applied. In that case the court held that:

> *Thus, even should the plaintiff be held to be a moneylender and the loan in exh. PI declared void, then in my view, the sum of RM150,000 would still be ordered to be refunded to the plaintiff under s 66 of the Contracts Act.* The reason being that s. 15 of the Moneylenders Act does not negate s. 66 of the Contracts Act. Section 15 only states that a loan contract in violation of the Act is 'unenforceable'. *This is axiomatic, as a void contract is unenforceable. It must be noted that as such loan contract is a void but not an illegal contract s 66 should be applicable considering that s. 66 is a specific provision to cater to an agreement which – is discovered to be void, or when a contract becomes void.*

[89] The same principle has also been decided by the Court of Appeal in the case of *Mahmood Ooyub v. Li Chee Loong* (*supra*) as follows:

> [265] Here is a case where the lenders had carried out their illegal act to the end in the Tan Bock Eng's Appeal and Pushpavalli's Appeal where the Property had been registered in the name of the lender or his nominee. It is not a case where the unlicensed moneylender was not aware of the illegality for otherwise he would not be engaged in such a convoluted transaction simmering beneath the thin veneer of respectability. *It is a case where the agreements were void ab initio and not one where they become void subsequently or are discovered to be void. Section 66 of the Contracts Act 1950 is not available to illegal moneylenders or their nominees* in Li Chee Loong and Lim Len Tat here in these appeals.

[90] Based on s. 66 of the Contracts Act 1950, the Court found that it is applicable based on the facts of this case. In this case the contract entered into is a void contract and the parties shall be restored back to their original position before the contract was entered into.

[91] For the record, in this case, the issue that arises is not related to whether D8 is a moneylender or not, but to the issue of whether the provisions under the Moneylenders Act 1951 are fully complied with based on the legal questions raised. There is no need for this Court to

make such a finding. This is stated in the case of *Sureshraj Krishnan v. PV Power Engineering Sdn Bhd & Anor* [2023] 2 MLRA 186; [2023] 1 MLJ 632, the Court held that:

> [42] Based on the facts and circumstances of this case, we find the respondents have failed to prove that the appellant was a moneylender as defined in s 2 of the Moneylenders Act 1951.
>
> [43] Consequently, we find the learned Judge had erred in law and in fact when she refused to consider the submission put forth by the appellant on s 2 of the Moneylenders Act and failed to make a finding that the appellant is not a moneylender. For the same reason, we also find the Learned Judge erred in concluding the PSA to be an unlicensed moneylending transaction.
>
> (emphasis added)

[21] KBH Marine and SSH as well as Pioneer Conglomerate and CSC are dissatisfied with part of the judgment and have thus on 1 March 2023 and 6 March 2023 respectively lodged Appeal 335 and Appeal 384 to the Court of Appeal.

[22] Ace Credit is also dissatisfied with part of the judgment and have on 1 March 2023 and 1 March 2023 lodged Appeal 336 and Appeal 337 to the Court of Appeal.

Findings Of This Court

[23] It is trite that our appellate function here is merely that of review. In respect of questions of law, the proper standard of review is that of the correctness of the answer. In other words, the appellate court is not bound to give deference to the finding of the court below and is at liberty to undertake its own analysis *de novo* on the question of law presented. Consequently, Hamid Sultan Abu Backer JCA held in *Yee Hock Lai & Anor v. Unity Performance Sdn Bhd & Anor* [2013] CLJU 486; [2013] 1 LNS 486; [2013] AMR 526 as follows on the question of law relating to construction of contractual terms:

> ... Such failure to consider the contractual provisions and conduct of the parties relating to the contractual terms compromises the integrity of the decision-making process and places the judgment as a perverse judgment requiring appellate intervention.

We hold that this is similarly true and equally applicable to questions of law concerning statutory interpretation which is the case here before us.

[24] The following relevant provisions of the Act relied upon by the parties are reproduced:

A

9A. Revocation or suspension of license

(1) If a licensee -

(a) has been carrying on his business, in the opinion of the Registrar, in a manner detrimental to the interest of the borrower or to any member of the public;

B

(b) has contravened any of the provisions of this act or any regulations or rules made under this Act;

(c) has been licensed as a result of a fraud, mistake or misrepresentation in any material particular; or

C

(d) has failed to comply with any of the conditions of the licence, the Registrar may, subject to section 9B, revoke the licence issued to the licensee or suspend the licence for such period as the Registrar thinks fit.

(2) A revocation or suspension of a licence under this section shall not affect any moneylending agreement entered into before such revocation or suspension, other than that in respect of which such revocation or suspension is made.

D

(3) Where a licence has been revoked or suspended, the licence shall have no effect from the date of revocation of the licence or during the period of suspension of the licence, as the case may be.

E

10P. Moneylender and borrower must enter into a moneylending agreement

(1) A licensee who intends to lend money to a borrower shall enter into a moneylending agreement with the borrower, and that agreement shall be in the prescribed form.

F

(2) Any licensee who contravenes this section shall be guilty of an offence under this act and shall be liable to a fine of not less than ten thousand ringgit but not more than fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both, and in the case of a second or subsequent offence shall also be liable to whipping in addition to such punishment.

G

(3) Any moneylending agreement which does not comply with the prescribed form shall be void and have no effect and shall not be enforceable.

H

15. Contract by unlicensed moneylender unenforceable

No moneylending agreement in respect of money lent after the coming into force of this act by an unlicensed moneylender shall be enforceable.

17. Prohibition of compound interest

I

(1) Any moneylending agreement made on or after the commencement of this act, for the loan of money by a licensee shall be illegal in so far as it provides, directly or indirectly, for the payment of compound interest, or for the rate or amount of interest to be increased by reason of any default in the payment of sums due under the moneylending agreement:

Provided that provision may be made in any such moneylending agreement that if default is made in the payment upon the due date of any sum or instalment payable to the licensee under the moneylending agreement, whether in respect of principal or interest, the licensee shall be entitled to charge simple interest on the unpaid sum or instalment which shall be calculated at the rate of eight per centum per annum from day to day from the date of default in payment of the sum or instalment until that sum or instalment is paid, and any interest so charged shall not be reckoned for the purposes of this act as part of the interest charged in respect of the loan.

(2) This section shall not apply to transactions known as Thavannai transactions, between one licensee and another licensee, provided that any such transaction is evidenced by a written document duly stamped.

17A. Interest for secured and unsecured loans

(1) For the purposes of this act, the interest for a secured loan shall not exceed twelve *per centum* per annum and the interest for an unsecured loan shall not exceed eighteen *per centum* per annum.

(2) Notwithstanding subsection (1), interest shall not at any time be recoverable by a licensee of an amount in excess of the sum then due as principal unless a Court, having regard to all the circumstances, otherwise decrees.

(3) Where in a moneylending agreement the interest charged for a secured loan or an unsecured loan, as the case may be, is more than that specified in subsection (1), that agreement shall be void and have no effect and shall not be enforceable.

(4) Any licensee who contravenes this section shall be guilty of an offence under this act and shall be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding eighteen months or to both.

18. Duty to keep original copy of moneylending agreement and accounts in permanent books

(1) Every licensee shall keep or cause to be kept and maintained -

(a) such original copy of the moneylending agreement for each loan in which he is or has been concerned; and

(b) such regular accounts of each loan made clearly stating in plain words and in English numerals with or without the numerals of the script otherwise used the terms and transactions incidental to the account entered in a book paged and bound in such manner as not to facilitate the elimination of pages or the interpolation or substitution of pages, for a period of not less than seven years from the end of the year in which the loan is made.

(2) If any licensee subject to the obligations of this section fails to comply with any of the requirements thereof, he shall not be entitled to enforce any claim in respect of any transaction in relation to which default shall have been made. He shall also be guilty of an offence under this act and shall be liable to a fine not exceeding *ten thousand ringgit, or in the case of a continuing offence, to a fine not exceeding **one thousand ringgit for each day or part of a day during which such offence continues.

19. Obligation to supply information as to state of loan and copies of documents relating thereto

(1) In respect of every moneylending agreement with regard to money lent by a licensee whether made before or after the commencement of this act the licensee shall, on any reasonable demand in writing being made by the borrower at any time during the continuance of the moneylending agreement and on tender by the borrower of the sum of three ringgit for expenses, supply to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, a statement of account in English figures signed by the licensee showing -

(a) the date on which the loan was made, the amount of the principal of the loan and the rate *per centum* per annum or the amount of interest charged; and

(b) the amount of any payment already received by the licensee in respect of the loan and the date on which it was made; and

(c) the amount of all sums due to the licensee for principal but unpaid and the dates upon which they became due and the amount of interest due and unpaid in respect of each such sum; and

(d) the amount of every sum not yet due which remains outstanding and the date upon which it will become due.

A statement of account given in the form in the First Schedule A shall be deemed to comply with the requirements of this subsection.

(2) A licensee shall, on any reasonable demand in writing by the borrower and on tender of the sum of five ringgit, supply a copy of any document relating to a loan made by him or any security therefor to the borrower or if the borrower so requires, to any person specified in that behalf in the demand.

(3) If a licensee to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made he shall not, so long as the default continues, be entitled to sue for or recover any sum due under the moneylending agreement on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default and, if such default is made or continued after proceedings have ceased to lie in respect of the loan, the licensee shall be liable to a fine not exceeding fifty ringgit for every day on which the default continues.

(4) A licensee receiving any payment of money from a borrower under a moneylending agreement for the repayment of money lent shall give, upon receiving the payment, a receipt to the borrower and any person acting in contravention of this subsection shall be guilty of an offence under this act and shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding ten months or to both.

21. Accounts under section 19 to be produced when suing in Court

(1) Where proceedings are taken in any Court by a licensee for the recovery of any money lent after the commencement of this Act or the enforcement of any moneylending agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act, he shall produce a statement of his account as prescribed in section 19.

(2) Where there is evidence which satisfies the Court that the interest charged in respect of the sum actually lent is excessive and that the transaction is harsh and unconscionable or substantially unfair, the Court shall reopen the transaction and take an account between the moneylender and the person sued and shall, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken between them and relieve the person sued from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of such principal, interest and legal costs as the Court, having regard to the risk and all the facts and circumstances (including facts and circumstances arising or coming to the knowledge of the parties after the date of the transaction) may adjudge to be reasonable, and, if any such excess has been paid or allowed in account by the debtor, may order the creditor to repay it and may set aside either wholly or in part or revise or alter any security given or moneylending agreement made in respect of money lent by the licensee and, if the licensee has parted with the security, may order him to indemnify the borrower or other person sued:

> Provided that nothing in this subsection shall prevent any further or other relief being given in circumstances in which a Court of equity would give such relief.

(3) Any Court in which proceedings might be taken for the recovery of money lent by a licensee shall have and may, at the instance of the borrower or surety or other person liable or of the trustee in bankruptcy, exercise the like powers as may be exercised under this section where proceedings are taken for the recovery of money lent, and the Court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this act by the borrower or surety or other person liable notwithstanding that the time for repayment of the loan or any instalment thereof may not have arrived.

A (4) On any application relating to the admission or amount of a proof by a licensee in any bankruptcy proceedings the Director General of Insolvency shall exercise the like powers as may be exercised by the Court under this section when proceedings are taken for the recovery of money:

Provided that if the moneylender is dissatisfied with the decision of the Director General of Insolvency the Court may, on the application of the licensee made under the Bankruptcy Act 1967 reverse or vary that decision.

(5) The foregoing provisions of this section shall apply to any transaction whatever its form may be that is substantially one of moneylending by a licensee.

(6) Nothing in the foregoing provisions of this section shall affect the rights of any *bona fide* assignee or holder for value without notice.

(7) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.

(8) For the purposes of this section, interest charged in respect of money lent by a licensee is excessive when the rate of that interest exceeds the maximum rate of interest permitted under this act.

[25] We will deal with the first to third questions as crafted and answered by learned High Court Judicial Commissioner *seriatim*.

[26] Upon our review, we foremost find it essential, while responding to the three questions posed in the High Court, to be clear on the concept of "void", "of no effect" and/or "not be enforceable" used relating to moneylending contracts in different sections of the Act (see, for example, ss. 10P(3), 15 and 17A(3) of the Act which are relevant and/or applicable here). Generally, "void" or "of no effect" is similar connoting invalidity as if the contract never existed. In other words, a void contract is treated as one that never legally existed. This can arise if the contract is either void *ab initio* or avoided in an instance when the contract becomes voidable. However, a "shall not be enforceable" contract is treated as one that exists but no specific performance or remedy pursuant to that contract can be sought in court.

[27] As a result, the concept of "void" and "of no effect" has strictly to be used in the alternative but not in cumulative with "shall not be enforced", *albeit* the practical effect may be similar depending mostly on the facts and circumstance of the case.

First Question

[28] Pioneer Conglomerate and CSC as well as KBH Marine and SSH basically sought to annul the agreement on the premise of contravention of the Act.

[29] In this regard, it was primarily contended before us that the agreement contravened the Act as follows:

(i) the agreement did not comply with the prescribed form in Schedule K of the Moneylenders (Control and Licensing) Regulations 2003 premised on a term loan. The agreement is instead premised on overdraft re-payable on demand basis; thus, in breach of s. 10P(1) of the Act;

(ii) the interest rate stipulated in the agreement is at 18% per annum which is excess of 12% per annum; thus, in breach of s. 17A of the Act; and

(iii) Ace Credit did not keep and maintain regular accounts of the loan and failed to produce a statement of account; thus, in breach of ss. 19 and 21 of the Act.

[30] It was emphasised that the variation, alteration or modification to the form of loan agreement and interest rate were made by Ace Credit without the prior consent of the registrar of moneylenders appointed pursuant to the Act; hence the agreement is null and void and unenforceable.

[31] Legal authorities relied upon by them include *Golden Wheel Credit Sdn Bhd v. Dato' Siah Teong Din (No 2)* [2023] 6 CLJ 438 and *MFS Sdn Bhd v. P Vivekananda Paniarasalam* [2025] 2 CLJ 602; [2025] 8 MLJ 712 that the resultant effect precluded the lender from recovering both the principal loan sum disbursed and interest payable from the borrower.

[32] In rebuttal, although Ace Credit acknowledged that there were indeed variation, alteration or modification to the form of loan agreement and interest rate, this modification has been acquiesced by Pioneer Conglomerate and CSC as well as KBH Marine and SSH. Thus, they who stood by and saw an injurious act done themselves but made no objection cannot thereafter complain of that act as a wrong at all following *Yap Lan & Ors v. Kong See Kuan* [2018] CLJU 819; [2018] 1 LNS 819; [2018] MLJU 769.

[33] Furthermore, the appropriate penalty in respect of the excessive interest charged by Ace Credit is only that of a fine pursuant to s. 17A(4) of the Act. Ace Credit also relied on *Amwang Credit Sdn Bhd v. Goh Che Chern* [2014] CLJU 331; [2014] 1 LNS 331; [2014] 5 MLJ 843 that there should have been distinction made on the type and nature of the loan as prescribed in s. 22 of the Act. Alternatively, Ace Credit contended notwithstanding the excessive interest imposed, the agreement can be saved *via* an appropriate adjustment to it by the court pursuant to s. 21(2) of the Act.

[34] As to the failure to keep and maintain regular accounts of the loan as well as production of statement of account to Pioneer Conglomerate and CSC as well as KBH Marine and SSH, Ace Credit contended that the appropriate remedies are those as prescribed on ss. 19 and 21 of the Act but they were not relied upon by Pioneer Conglomerate and CSC as well as KBH Marine and SSH during the course of the moneylending.

[35] It does not seem in dispute to us that there has been contravention of the Act as so asserted by Pioneer Conglomerate and CSC as well as KBH Marine and SSH in that both the form of loan agreement used and interest charged were not in accordance with the provisions in the Act.

[36] The defence of acquiescence of Ace Credit, is however, in our view unsustainable. In this regard, we concur with the following held by Lee Heng Cheong J (later JCA) in *Joan Fung v. Allianz General Insurance Company (Malaysia) Bhd* [2012] 6 CLJ 879; [2011] 6 MLRH 101 with emphasis added by us:

> *It is fundamental principle of law that an estoppel cannot prevail against a statue, a common law of public policy or protect against an illegality.* Since the Employee's' Provident Fund Acts are essentially social legislations to protect the employee's' interest, courts must therefore give effect to in the interest of public policy. This is especially so when it comes to sections 9(1) and 47(1), EPF Act whereby it is expressly provided that a breach of the same is illegal and a punishable offence.
>
> It is trite law, that a statute of public policy or to protect against an illegality is indefeasible by estoppels/waiver. This principle is referred to in the textbook, *Estoppel By Conduct and Election* by Mr Justice Kennedy Handley (Sweet & Maxwell). The principle was applied by Viscount Radcliffe in *Kok Hoong v. Leong Cheong Kweng Mines, Ltd.* [1964] 1 All ER 300 as follows:
>
> > The respondent has invoked in support of its defence a principle which appears in our law in many forms, that a party cannot set up an estoppel in the face of a statute. Thus, a corporation on which there is imposed a statutory duty to carry out certain acts in the interest of the public cannot preclude itself by estoppel *in pais* from performing its duty and asserting legal rights accordingly ...
>
> It does not appear to Their Lordships that the principle is confined to transactions that have been made the subject of legislation ... the common law may itself prohibit the enforcement of certain contracts such as those of an infant not for necessaries, and it cannot be supposed that it would any the less refuse to base a judgment on an estoppel against an infant who had so contacted.
>
> An infant who ... obtained goods... by representing himself to be of full age cannot be estopped from setting up his infancy, ...
>
> *... It has been said that the question whether an estoppel is to be allowed or not depends on the whether the enactment or rule of law relied on is imposed in the public interest or "on grounds of general public policy".* ... However, a principle as widely stated as this might prove to be rather an elusive guide, since there is no statute, at least public general statue, for which this claim might not be made. In Their Lordships' opinion *a more direct test* to apply in any case such as the present, *where the laws of money lending or monetary security are*

> *involved, is to ask whether the law that confronts the estoppel can be seen to represent a social policy to which the court must give effect in the interest of the public generally or some section of the public, despite any rule of evidence as between themselves that the parties may have created by their conduct or otherwise.* Thus the laws of gaming or usury (*Carter v. James*) override an estoppel: so do the provisions of the Rent Restriction Acts with regard to orders for possession of controlled tenancies (*Welch v. Nagy*). (emphasis added)

See also *Powernet Industries Sdn Bhd v. Golden Wheel Credit Sdn Bhd* [2020] 10 CLJ 374; [2020] 12 MLJ 412 and *Concrete Parade Sdn Bhd v. Apex Equity Holdings Bhd & Ors* [2021] 9 CLJ 849; [2022] 2 MLRA 553.

[37] As for the non-provision of regular accounts of the loan and a statement of account by Ace Credit, we find that there is no cogent evidence adduced that Pioneer Conglomerate and CSC as well as KBH Marine and SSH sought for them. Therefore, this is immaterial and of no consequence.

[38] In the premises and in view of the non-compliance of both form of loan agreement used and interest charged, we do not find that the learned High Court Judicial Commissioner plainly erred in finding that the agreement is contrary to the Act. For completeness and although we are empowered to cure the problem of excessive interest charged by Ace Credit pursuant to s. 21(2) of the Act, we find it pointless to do so as there is still contravention of s. 10P of the Act in respect of the form of loan agreement used which cannot be saved.

Second Question

[39] In consequence of the contravention of the Act in answer to the first question, the learned High Court Judicial Commissioner found that the agreement is void but not *ab initio*.

[40] As a result, the learned High Court Judicial Commissioner went on to answer that the other loan documents are invalid because they are related and stated in the agreement and must thus be deemed as one whole document in the same transaction. Hence when the agreement is void, the other loan documents must be avoided too. It follows that the private caveat lodged by Ace Credit must likewise be invalid.

[41] Based on our review and *albeit* the charge annexure and the private caveat on the properties created separate security rights accorded to Ace Credit, we find they are inextricably connected to the agreement. It follows that the invalidation of the agreement necessarily invalidates the other loan documents and the private caveat lodged on the properties as well. This is simply because the substratum of the security for the loan is lost when the loan agreement is avoided. This security cannot thereafter stand in isolation.

[42] As a result, we again do not find that the learned High Court Judicial Commissioner plainly erred in finding that the other loan documents completed and private caveat lodged based on the agreement are invalid.

Third Question

[43] As the result of the learned High Court Judicial Commissioner's finding that the agreement is void, the restitutionary relief under s. 66 of the Contracts Act 1950 ("CA") has been accordingly invoked. It is provided as follows in s. 66 of the CA:

> 66. Obligations of person who has received advantage under void agreement or contract that becomes void
>
> When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.
>
> ILLUSTRATIONS
>
> (a) A pays B $1,000 in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the $1,000.
>
> (b) A contract with B to deliver to him 250 gantangs of rice before the 1st of May. A deliver 130 gantangs only before that day, and none later. B retains the 130 gantangs after the 1st of May. He is bound to pay A for them.
>
> (c) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her $100 for each night's performance. On the sixth night A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.
>
> (d) A contract to sing for at a concert for $1,000, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the $1,000 paid in advance.

The learned High Court Judicial Commissioner paid particular reliance on the case of *Muhibbah Teguh Sdn Bhd v. Yaacob Mat Yim* [2005] 4 CLJ 853 where s. 66 CA was also invoked when the moneylending contract was declared void.

[44] Pioneer Conglomerate and CSC as well as KBH Marine and SSH however contended it is plainly provided in ss. 10P(3) and 17A(3) of the Act that the agreement is unenforceable; thus, restitution under s. 66 of the CA cannot be invoked. Reliance is made on the recent case of *Triple Zest Trading*

& Suppliers & Ors v. Applied Business Technologies Sdn Bhd [2023] 10 CLJ 187; [2023] 6 MLJ 818 where the court did not invoke s. 66 of the CA. Abdul Rahman Sebli CJ (Sabah & Sarawak) held therein as follows:

> [22] Going by the penalty provided for under s. 5(2) of the MA51, the crime of moneylending without licence is by no means a trivial offence. We are mindful that we are not here dealing with a criminal matter but it goes to show how serious moneylending without licence is in the eyes of the law.
>
> [23] We agree with learned counsel for the appellants that if the court were to lend a helping hand to a person who charges exorbitant interest to claim back the principal amount lent, it would create a fertile breeding ground for illegal moneylenders also known as "Ah Long" because in the event the borrower does not repay, the principal loan amount is guaranteed to be recoverable through the court process. Ah Longs would have nothing to lose. Their only loss, if at all it can be called a loss, is that they will not be able to enjoy the fruits of the exorbitant interest rates that they charged their borrowers, but that should matter little to them as they will get back their money in full.
>
> [24] In the present case, not only was the respondent not punished for contravening s. 5(2) of the MA51 but it was in some way given a helping hand by the court, *albeit* unwittingly. Without being derogatory, the decision of the courts below can be likened to allowing a robber to claim back his cost and expenses in a botched robbery attempt.
>
> [25] It makes a mockery of the MA51 and the Financial Services Act 2013. While banks and licenced moneylending companies need to obtain licences and abide by strict monetary regulations, unlicensed moneylenders need only to use the term "agreed profit" in place of "interest" as "consideration" in carrying on their illegal moneylending activities.

Furthermore, reliance has also been made on the case of *Malayan Banking Bhd v. Neway Development Sdn Bhd & Ors* [2012] 9 CLJ 1014; [2013] 1 MLJ 597 where it was held that the courts will not enforce or grant any remedy under any illegal contract. In other words, the loss lies where it falls.

[45] In our view, the recent case of this court of *Golden Wheel Credit Sdn Bhd v. Dato' Seah Tiong Din* [2025] 10 CLJ 742 which reversed *Golden Wheel Credit Sdn Bhd v. Dato' Seah Teong Din* (*supra*) relied by Pioneer Conglomerate and CSC is very instructive. Faizah Jamaludin JCA held as follows therein with emphasis added by us:

> [36] The High Court in *Amanah Raya Capital* (*supra*) held that where the moneylending agreement is void *ab initio* for the use of the wrong prescribed form, section 66 CA 1950 allows the plaintiff to restitution for the monies it loaned to the defendant in that case. This is consistent with illustration (a) of section 66 CA 1950.

A [37] *In this present case, the use of the wrong prescribed form, the charging of interest for an unsecured loan and the failure to give the respondent a stamped copy of the Moneylending Agreements, rendered the said agreements void ab initio and unenforceable.* Based on Amanah Raya Capital, because the Moneylending Agreements are void *ab initio* for non-compliance with the MLA 1951, the person who had received advantage under the agreements is bound to
B compensate or provide restitution to the person from whom he received the advantage.

[38] Section 66 CA 1950 provides where an agreement is discovered to be void, any person who has received any advantage under the agreement is bound to restore it, or make compensation for it, to the person from
C whom he received it.

[39] The respondent's defence is that the appellant is not entitled to compensation or restitution of the Unpaid Principal under section 66 CA 1950 because the monies were not disbursed to him but to Instant Bonus.

[40] The facts show that the appellant had disbursed the monies under
D the Moneylending Agreements to Instant Bonus based on the agreements and the instructions given by the respondent to the appellant in the LOIs. The appellant had acted on the respondent's instructions. The respondent had, therefore, received advantage under the Moneylending Agreements by the appellant acting on his written instructions in the LOIs in disbursing the loan amounts to Instant Bonus.

E [41] The Federal Court in its recent decision in *Detik Ria* (*supra*) undertook a comprehensive analysis of whether restitution under section 66 CA 1950 can and should be granted where the contract is found to be void and/or illegal.

F [42] The Federal Court in *Detik Ria* held that section 66 CA 1950 is a wide provision which has no direct parallel under English law. It cited with approval a similar observation made earlier by Ravinthran Paramaguru JCA in *Public Bank Bhd v. Ria Realiti Sdn Bhd & Ors* [2021] 4 MLJ 537; [2021] 3 CLJ 772, CA, where he said:

> G *[63] ... Section 66 has been said to embody a restitutionary principle which has no parallel in common law. It may have been inspired by rules of equity but resort to it is not the same as seeking relief under equity. A claim under it is also not a claim under the terms of a void contract but it is for restitution from a party that received an advantage under it. And section 66 does not require absence of knowledge of illegality or lack of intention to contravene the law as a precondition for its invocation.*

H [43] In *Detik Ria*, the Federal Court examined the first limb of section 66 CA 1950, specifically addressing circumstances in which an agreement is "discovered to be void". It undertook this analysis due to varying interpretations in case law concerning illegality, which has led to some uncertainty about the application of section 66 CA 1950. Like in *CME*
I *Group Bhd v. Bellajade Sdn Bhd & Another Appeal* [2019] 1 MLJ 141; [2018] 10 CLJ 147; [2018] 7 AMR 105, FC, the Federal Court in *Detik Ria* held

that its earlier decision in *Singma Sawmill Co Sdn Bhd v. Asian Holdings (Industrialised Buildings) Sdn Bhd* [1980] 1 MLJ 21; [1979] 1 LNS 96, FC, should be construed in the context of its particular facts.

[44] Resulting from its analysis of various case law, the Federal Court pronounced the following principles in respect of section 66 CA 1950:

(a) Section 66 should be interpreted broadly, thereby permitting remedies such as restoration or restitution to the *status quo ante* where appropriate;

(b) The phrase "discovered to be void" in the first limb of section 66 does not imply that a contract is rendered void upon discovery, nor does it mean the contract is void due to the discovery of illegality;

(c) Section 66 applies to contracts that are void *ab initio*. This interpretation aligns with the placement of section 66 in Part V. of CA 1950, which relates to the "Performance of Contracts," and prescnbes this remedy in situations where a contract is discovered to be void, irrespective of the parties' knowledge; and

(d) Awareness of illegality does not entirely preclude the remedy of restitution under section 66. The mere fact that parties were aware of the agreement's illegality does not necessarily bar relief under section 66.

[46] The Federal Court provided the following guidance regarding the granting of restitution under section 66 CA 1950 ("*Detik Ria* Guidelines"):

How Is Section 66 To Be Applied?

[148] Therefore, the grant of the s. 66 remedy warrants the formulation of a guide to determining whether the s. 66 remedy is engaged or not. Where a contract is 'discovered to be void' or 'becomes void', the guidelines for the application of s. 66 are as follows.

[149] First, the centrality of the illegality in the statute is to be considered. This is a matter of construction of the particular statute.

[150] Second, the proportionality of denying s. 66 relief to the illegality should be considered. There are numerous factors which should be considered in assessing proportionality.

(i) whether the contract was performed or executed;

(ii) whether allowing the claim would defeat the purpose of the prohibiting statute;

(iii) the nature and extent of the illegality;

(iv) the extent of the culpability of the parties;

(v) the intent of the parties in embarking on the transaction or omission as the case may be;

(vi) the nexus between the illegality and the contract;

(vii) whether the denial of relief is proportionate to the illegality.

[151] *In this context, the extent of the parties' culpability for the illegality should be considered. Culpability refers to the degree of blameworthiness or responsibility of a person for their actions or omissions that lead to the illegality. Culpability is different and distinct from knowledge. Knowledge refers to the awareness or understanding of facts or circumstances related to that act or omission. In other words, culpability is a broader concept than knowledge in that it encompasses more than just the intent and mental state of the individual at the time of the act or omission. In short, knowledge is a component of culpability.*

[152] *We reiterate that the presence of knowledge alone is not a complete bar to the s. 66 remedy but is an important factor to be considered in determining culpability. Culpability; more particularly the extent of culpability, is one of the decisive factors in determining whether a remedy under s. 66 should be granted.*

[153] *Finally, the court should consider holistically if the denial of relief is proportionate to the illegality.*

[154] *Put simply, the following factors, in this order, may be considered in determining if s. 66 relief should be granted:*

(i) the centrality of the illegality in the context of the particular statute breached;

(ii) proportionality;

(a) culpability;

(b) was the contract performed?

(c) is the denial of s. 66 relief a proportionate response to the illegality?

[155] *The foregoing factors set out in the guidelines are not exhaustive. It is important that these factors are not utilised in a mechanistic and rigid fashion but considered holistically and given weight in accordance with the facts of the particular case. (See Ting Siew May v. Boon Lay Choo & Anor [2014] SGCA 28, Ochroid Trading Ltd & Anor v. Chua Siok Lui [2018] SGCA 5 and Patel).*

[47] We applied the *Detik Ria* Guidelines in determining whether restitution under s. 66 CA 1950 ("s. 66 remedy") ought to be granted to the appellant in this case.

[48] As can be discerned from the passages of the Federal Court's judgment quoted in para. [46] above, the *Detik Ria* Guidelines established a two-stage assessment: first, evaluating the centrality of the illegality within the context of the statute breached; and secondly, assessing the proportionality of denying a section 66 remedy in light of the illegality.

(i) Centrality of illegality in the context of the statute breached

[49] In this instance, the statute breached is the MLA 1951. In deciding the centrality of illegality in the context the MLA 1951, consideration must be given to the nature of the illegality.

...

[50] Pursuant to the MLA 1951, only moneylenders validly licenced under the Act are permitted to enter into moneylending agreements. Illegality is central to the MLA 1951: specifically, the prohibition against unlicensed moneylenders entering into moneylending agreements. The Federal Court in *Detik Ria* held:

> [177] ... The prohibition in the statute is important because it forbids the levying of extortionate rates of interest levied on borrowers who are constrained to resort to borrowing from such unlicensed lenders. It carries with it great socio-economic ramifications. The object and purpose of the Moneylenders Act 1951 is to deter and disable illegal Moneylending Agreements. The parties to the illegal contract in *Triple Zest* knew, or ought to have known, that such moneylending is prohibited.

[51] The Court of Appeal in *Mahmood bin Ooyub* (*supra*), and the Federal Court in *Triple Zest* (*supra*), held that illegality struck at the core primary obligations under the MLA 1951. In both these cases, moneylending transactions by unlicensed moneylenders that were disguised as sale and purchase of properties to secure the grant of loans with interest, in order to circumvent the MLA 1951, rendered the agreements illegal under both the MLA 1951 and section 24 CA 1950.

[52] *In this present case, the Moneylending Agreements are not illegal either under the MLA 1951 or section 24 CA 1950. They were entered by a licensed moneylender, did not impose extortionate interest rates on the borrower, and neither their consideration nor object was immoral or against public policy.*

(ii) Proportionality

[53] According to the *Detik Ria* Guidelines, in evaluating the proportionality of denying a section 66 remedy, one of the factors courts should consider is whether the agreement has been performed. In this case, the appellant's act of lending the monies and disbursing the loans under the Moneylending Agreements and the LOIs had been carried out. On the respondent's instructions, the appellant had disbursed the Unpaid Principal to Instant Bonus.

[54] Another consideration is whether granting a section 66 remedy would undermine the intent of the MLA 1951. In this case, it does not. As stated by the Federal Court in *Detik Ria*, the purpose of the MLA 1951 is to deter and disable illegal moneylending agreements. In this instance, both Moneylending Agreements are not illegal.

A [55] Courts must also consider the nature and extent of the illegality, the nexus between illegality and the contract, and the culpability of the parties. Here, the Moneylending Agreements are not illegal. Accordingly, there is no nexus between illegality and the agreements, and the question of the parties' culpability does not arise.

B [56] An important factor that must be considered in this enquiry into proportionality, is whether denying a section 66 remedy constitutes a proportionate response to the Moneylending Agreements, which are void but not illegal. In *Detik Ria*, the Federal Court observed that courts have, in some instances, granted section 66 remedies for illegal agreements based on the principle of proportionality.

C [57] Additionally, as observed by Lee Swee Seng JCA (as he then was) in *Mahmood bin Ooyub*, there are cases where a party tries to resile from genuine moneylending transactions by alleging illegality. He said:

> [2] Granted there would be those cases where the transactions are genuine as reflected in the documents and then one party tries to
D resile from it and alleges it is illegal moneylending. Then on the opposite side would be cases where the moneylending transaction is dressed like an innocuous sale and purchase transaction where it is argued that the Court should not go beyond its four walls for otherwise no transaction would be certain.

E [58] *In this present case, the Moneylending Agreements in question were transparently structured as agreements to lend money by a licensed moneylender, without any attempt to disguise their true nature. They were not hiding behind a false front.*

[59] *Differing from Mahmood bin Ooyub and Triple Zest, the Moneylending*
F *Agreements involved a licensed moneylender, and the interest rates charged were within the statutory limits set by the MLA 1951, despite being erroneously for unsecured loans. Although the agreements were in a wrong prescribed form, they were, nonetheless, in a form prescribed by Regulation 2003 and clearly identified themselves as moneylending agreements. The terms accurately represented their intended purpose, with no attempt to conceal the nature or object of the transactions, in contrast to the*
G *agreements in Mahmood bin Ooyub and Triple Zest.*

[60] *Accordingly, we conclude that, in view of these considerations, the application of proportionality to the matrix of facts supports granting the appellant a section 66 remedy. In this context, refusing a section 66 remedy would not constitute a proportionate response, particularly given that the Moneylending Agreements, though void, are not illegal.* (emphasis added)

H **[46]** We find the facts of this case very similar to that in *Golden Wheel Credit Sdn Bhd v. Dato' Seah Tiong Din* (*supra*). There is no doubt contravention of statute here by reason of the wrong form used as well as interest rate charged but these do not tantamount to illegality in the s. 24CA sense involving the
I contractual consideration. Restitution is only debarred such as in *Triple Zest Trading & Supplies & Ors v. Applied Business Technologies Sdn Bhd* (*supra*) which concerned unlicensed moneylending coupled with attempt to conceal the true nature of the transaction.

[47] For completeness, we are nonetheless mindful that ss. 10P(3) and 17A(3) of the Act provide for the consequential effect of the moneylending contract being void, of no effect and unenforceable. In our view, it is for the court to decide whether the contract is void and of no effect or otherwise valid but unenforceable depending on the nature and gravity of the statutory contravention as well as proportionality in light of the *Detik Ria* Guidelines.

[48] We find that the nature of the contravention of the Act here are not serious. There is no attempt to conceal the object of the making of the agreement. Accordingly, there is no substantive illegality. Moreover, we find that the agreement has been wholly performed by Ace Credit but Pioneer Conglomerate has defaulted in repaying the loan particularly the principal sum.

[49] The learned High Court Judicial Commissioner held that the agreement is void and we do not find that this is plainly wrong on the facts and circumstances here. Since the contract is found void, the restitutionary remedy as ordered pursuant to s. 66 of the CA is correct and appropriate.

Conclusion

[50] For the foregoing reasons, we find that there is no merit in all the appeals, *viz.* Appeal 335, Appeal 336, Appeal 337 and Appeal 339 that justified appellate intervention. They are accordingly all dismissed. The judgment of the High Court dated 9 February 2023 is affirmed but with the following variation to para. (3) therein by replacing the phrase "dari tarikh perintah ini" with "dari penerimaan wang yang diperintahkan dalam perenggan (4)". Each party to bear their own costs in all the appeals.